

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)	
)	
Jeremiah Xavier Spicer,)	No. 92252
)	
Miracle Dionna Spicer and)	No. 92253
)	
Darryl Williams, Jr.)	No. 92254

Representing the Parties:

For Appellants: Martha Williams¹

For Respondent: Meschelle Hardin, Supervisor, HRA Unit

Counsel for Board of Equalization: Ian C. Foster, Graduate Student Assistant
Craig R. Shaltes, Tax Counsel III

OPINION

These appeals are made pursuant to sections 19324, subdivision (a), and 20645² of the Revenue and Taxation Code from the actions of the Franchise Tax Board (FTB or respondent) in denying the claims of Jeremiah Xavier Spicer, Miracle Dionna Spicer, and Darryl Williams, Jr. (appellants), under the Homeowners and Renters Property Tax Assistance Law for assistance in the amount of \$600 each for the 2000 claim year.

¹ It appears that she also signed her name as “Martha Williams Rodriguez.”

² Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

Prior to January 1, 1994, the Homeowners and Renters Property Tax Assistance (HRA) Law unequivocally granted claimants the right to appeal a denial of a claim for assistance to this Board. The HRA provisions comprise Part 10.5 of Division 2 of the Revenue and Taxation Code. Part 10.5 contains section 20645, which states in pertinent part:

“[I]f a claimant is aggrieved by the denial in whole or in part for assistance, then the provisions in Chapters . . . 18 (commencing with section 18551) . . . and 20 (commencing with section 19051) of Part 10 shall apply, as if the amount in controversy was a tax” (Emphasis added.)

The above quoted language of section 20645 was added by Statutes 1979, chapter 292, section 29, operative for fiscal years beginning in 1977. From 1979 through 1993, certain provisions in Chapter 18 of Part 10 gave taxpayers the right to appeal deficiency assessments to this Board. (See Rev. & Tax. Code, § 18593, as amended by stats. 1951, ch. 70, § 1.) Also, certain provisions in Chapter 20 of Part 10 gave taxpayers the right to appeal denials of claims for refund to this Board. (See Rev. & Tax. Code, § 19057, as amended by stats. 1974, ch. 1111, § 2.) Under section 20645, sections 18593 and 19057 applied as though the amount of HRA assistance at issue was a tax; therefore, claimants had the right to appeal denials of HRA assistance to this Board.

Although the legislature renumbered the relevant appeal statutes operative January 1, 1994, the renumbering does not affect an HRA claimant’s right to pursue an appeal. For example, section 19057 was renumbered as section 19324 (right to appeal from denial of claim for refund). Section 19324 states, in pertinent part:

“[A]t the expiration of 90 days from the mailing of the notice, the Franchise Tax Board’s action upon the claim [for refund] is final unless within the 90-day period the taxpayer appeals in writing from the action of the Franchise Tax Board to the board.”

Because the statutes referred to by section 20645 no longer exist, it is apparent that the legislature simply neglected to amend section 20645 to reflect the relevant renumbered provisions. Therefore, we believe that the renumbering of Chapters 18 and 20 of Part 10 do not affect an HRA claimant’s right to appeal the denial of a claim for assistance to this Board.

Appellants are disabled minor children who receive Supplemental Security Income (SSI) and who all live in the same residence with a guardian.³ Appellants each filed a claim for assistance as a renter-claimant for the 2000 claim year in the amount of \$600. Respondent issued a letter to each appellant on October 3, 2000, which denied assistance because appellants allegedly did not pay rent and so did not qualify for assistance. On October 6, 2000, each appellant filed a timely appeal to this Board through a representative. Pursuant to California Code of Regulations, title 18, section 5074, on March 14, 2001, all three appeals were consolidated because the facts and issues are identical and no right of any party will be prejudiced.

Section 20541 permits certain renters of residential dwellings to claim property tax assistance from the State of California; under section 20544 the amount of assistance is a specified percentage of \$250, determined according to the claimant's household income. Sections 20501 through 20514 set forth a number of requirements and definitions pertaining to this assistance, three of which are at issue in this appeal. Section 20505, subdivision (a), defines (in pertinent part) a "claimant" as an individual who:

“[W]as either (1) 62 years of age or older on the last day of the calendar year or approved fiscal year . . . or (2) blind or disabled . . . on the last day of the calendar year or approved fiscal year . . . who was a member of the household, and who was either (1) the owner and occupier of a residential dwelling . . . or (2) the renter of a rented residence.”

For the 2000 claim year, the claimant must satisfy the above conditions as of December 31, 1999. (Rev. & Tax. Code, §§ 20503, subd. (b) & 20505, subd. (a).) Generally, section 20505 waives the 62-year age requirement when the claimant is disabled. We note, however, that the legislature may not have intended for minors to be eligible claimants, as evidenced by section 20506, which excludes minors from the definition of "household" and therefore excludes a minor's income from the calculation of household income. Still, the wording in section 20506 leaves open the possibility that only minors other than a minor-claimant are excluded from the definition of a "household." Under the latter interpretation, a minor-claimant is a member of the "household" and his or her income is included in the household income calculation.⁴

Whatever the renter-claimant's other qualifications, he or she must still be the "renter of a rented residence." Section 20509 defines "rented residence" as, in pertinent part:

³ The record on appeal does not clearly indicate whether appellants' representative is their parent or guardian.

⁴ In this opinion we decline to make a definitive interpretation of section 20506 regarding its effect on the eligibility of minors to claim assistance.

“[P]remises rented and occupied by the claimant as his or her principal place of residence during the calendar year for which assistance is claimed.”⁵

Further, the claimant must pay rent, which is defined in section 20510:

“ ‘Rent’ means amount paid at arms length solely for the right of occupancy of a residence and utility payments required to be paid by the rental agreement. At least fifty dollars (\$50) per month must be paid by each renter-claimant.”

At the outset, we will presume respondent’s denials are correct, and the burden is on appellants to prove the denials are in error. (Todd v. McColgan (1949) 89 Cal.App.2d 509; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969; Appeal of Ismael R. Manriquez, Cal. St. Bd. of Equal., Apr. 10, 1979.) Respondent does not dispute that appellants are “disabled” within the meaning of section 20505, subdivision (a), and so they may fall under the definition of “claimants” despite being minors. Rather, respondent denied assistance because, as stated in its brief in each appeal:

“Generally, a child does not pay rent to a parent for the privilege of living in the family home. Therefore, even though a minor child is disabled, the child is not qualified to file a claim for renter’s assistance unless the [section 20510] arms length arrangement exists.”

Appellants’ representative argues that each appellant contributes \$200 per month from their SSI to the rent paid for the residence in which they all live. The total rent payment for the premises is \$825 per month. In support of her argument, appellants’ representative cites section 20542, subdivision (b), which provides that, when two or more otherwise eligible individuals pay rent for the same residence, they may each claim assistance. Therefore, it is urged, each appellant is entitled to claim assistance. Included with the appeals is a copy of a rental agreement which lists as tenants Martha L. Williams, Myron K. Rodriguez and “three children.”

We interpret sections 20509 and 20510 to require that, in order to qualify for assistance, a renter-claimant must pay rent of at least \$50 per month pursuant to a rental agreement. Appellants will meet this qualification if they can demonstrate the existence of two

⁵ We note that rented premises which are exempt from property taxation, except where the owner pays possessory interest taxes or makes payments in lieu of property taxes which are substantially equivalent to property taxes, will not be considered a “rented residence” for purposes of HRA claims. (Rev. & Tax. Code, § 20509, subd. (a).)

conditions: first, there must be evidence that appellants actually paid the minimum required rent from their own funds; second, a rental agreement must make appellants liable for the payment of rent.

Evidence that appellants actually paid rent with their own funds might include documents showing that, without appellants' SSI, there would not be sufficient income to pay the rent. Evidence might also include bank records demonstrating that appellants maintain their own accounts from which funds are drawn at regular intervals coinciding with the deadlines to pay rent. No such evidence has been submitted in the instant appeals. Appellants' representative merely asserts that each appellant pays \$200 per month in rent. Such an assertion, absent support, is insufficient to overcome the presumption that respondent's denials are correct.

Even if there was sufficient evidence to prove that appellants actually paid rent, appellants still do not satisfy the second condition, that is, a rental agreement must make appellants liable for the payment of rent. In California, a lease is construed according to the same principles governing the construction of contracts. (Eltinge & Graziadio Development Co. v. Childs (1975) 49 Cal.App.3d 294; Bates v. Industrial Property Holding Co. (1957) 155 Cal.App.2d 697.) A minor may generally make a contract subject to a power of disaffirmance. (Fam. Code, § 6700.) Nonetheless, a minor cannot make any contract "relating to real property or any interest therein" as such contract is "void and requires no act of disaffirmance." (Burnand v. Irigoyen, (1947) 30 Cal.2d 861, 865; Fam. Code, § 6701, subd. (b).) Therefore, if appellants were actual parties to the rental agreement, such agreement would be void with respect to appellants, and appellants could not be held liable for rental payments pursuant to the rental agreement.⁶ However, we note that appellants' names appear nowhere on such agreement, so they are not parties to the rental agreement.⁷

In Burnand v. Irigoyen, *supra*, the California Supreme Court discussed circumstances under which a minor might be held liable to pay rent under an implied contract. In Burnand, the court refused to allow the defendant to recover payments made under a land-purchase contract executed while the defendant was a minor. This was a case based in estoppel, and the holding relied on Family Code section 6712 (former Civil Code section 36), which provides that a minor may not disaffirm an otherwise valid contract to pay the reasonable value of things necessary for the minor's support. The court held that an implied contract existed between the defendant and the seller of the land to make payments under the original purchase contract, and that the defendant was estopped from disaffirming the implied contract. Four circumstances guided the court's conclusion:

⁶ In this opinion, we make no determination regarding emancipated minors entering into rental agreements.

⁷ A valid lease must designate the parties. (Santa Monica Rent Control Bd. v. Bluvshstein (1991) 230 Cal.App.3d 308, 316.) In addition to two named adults, the rental agreement only refers to "three children."

- (1) The defendant was not herself a party to the original purchase contract; rather, the contract was made with her parents (Burnand, supra, at p. 867-8.);
- (2) The defendant's parents were unable to make payments under the contract from their own resources, and use of the home was necessary for the defendant's support (Id.);
- (3) Payments were traceable directly to proceeds from the sale of defendant's own assets (Id.); and
- (4) Defendant allowed these payments to continue after she attained the age of majority. (Id.)

Out of the above circumstances, only the first is undisputedly present in this case, that is, the appellants do not appear to be parties to the rental agreement. The third circumstance, that appellants paid the rent from their own funds, was explicitly alleged, but not proven. The second circumstance was not alleged, and the fourth circumstance is clearly not present in this appeal because appellants are still minors. Burnand's circumstances under which a minor might be held liable to pay rent under an implied contract are not present in this case. We find no implied contract between appellants and their representative's lessor.

Because appellants did not pay rent of at least \$50 per month pursuant to a rental agreement, expressed or implied, they did not qualify for renters assistance. We must sustain FTB's denial of assistance.

ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19333 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board in denying the claims of Jeremiah Xavier Spicer, Miracle Dionna Spicer, and Darryl Williams, for renters assistance in the amount of \$600 each for the claim year 2000 be and the same are hereby sustained.

Done at Sacramento, California, this 31th day of May, 2001, by the State Board of Equalization, with Board Members Mr. Klehs, Mr Chaing, Mr. Parrish, Mr. Andal, and *Ms. Marcy Jo Mandel present.

Claude Parrish, Chairman

John Chiang, Member

Johan Klehs, Member

Dean Andal, Member

* Marcy Jo Mandel, Member

*For Kathleen Connell per Government Code section 7.9.